

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**DENISE MONARQUE, As Personal Representative
Of The Estate of RICHARD MONARQUE, Deceased,**

Plaintiff,

v.

Cause No. CV-2011-0135 KG/KBM

CITY OF RIO RANCHO, et al,

Defendants.

ORDER APPOINTING GUARDIAN AD LITEM

THIS MATTER comes before the Court upon Plaintiff's Motion for the Appointment of a Guardian Ad Litem (Doc. 108) for the purpose of evaluating and advising the court regarding any proposed resolutions of this case. A settlement conference has been set for September 23, 2013 in this matter and Court requests the Guardian Ad Litem's presence at the settlement conference. The Court having reviewed the Motion (Doc. 108), Defendants' Response (Doc. 110), Plaintiff's Reply (Doc. 112), a hearing held on this matter (Doc. 117), and otherwise being fully advised:

FINDS:

1. Philip B. Davis, an attorney, is appointed by the Court to serve as guardian ad litem in connection with the Court's review and approval of any proposed resolution of this case insofar as it involves A.M., R.M., and M.M., Richard Monarque's three minor children. Richard Monarque's other three children have all reached the age of majority.

3. The Court appoints Mr. Davis as the guardian ad litem to investigate, on behalf of the Court, the fairness and reasonableness of any proposed resolution of this case insofar as it involves A.M., R.M., and M.M.

4. The appointment of Mr. Davis as guardian ad litem does not contemplate his representation of A.M., R.M., and M.M. as an advocate, but only as a functionary of the Court.

5. The responsibilities of the guardian ad litem under this appointment are to the Court and not to A.M., R.M., and M.M. The guardian ad litem should not be requested to invade or interfere with Plaintiff's counsels or the personal representative's responsibilities to adequately and effectively represent the interests of A.M., R.M., and M.M. in addition to the three children of Mr. Monarque who have reached the age of majority.

6. There are strong public policy reasons to grant immunity to the guardian ad litem in this case. Mr. Davis, who is acting as an arm of the Court, is performing an essential role in the Court's administration of justice.

7. All immunities and privileges available to the guardian ad litem, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991) should be extended to the guardian ad litem, Mr. Davis, in this matter.

8. The Court has considered the factors and the balancing test set forth by the New Mexico Supreme Court in *Leyba v. Whitley and Shapiro*, 120 N.M. 768, 907 P.2d 172 (1995) in determining the duties of the guardian ad litem and finds that no duty is owed by the guardian ad litem to A.M., R.M., or M.M., or to the other litigants in this case.

9. Philip B. Davis is qualified to perform the duties of a guardian ad litem in this matter for Richard Monarque's minor children, A.M., R.M., and M.M.

IT IS THEREFORE ORDERED that Philip B. Davis is hereby appointed to serve as guardian ad litem on behalf of A.M., R.M., and M.M., minors, and to serve as an arm of the Court in connection with the Court's consideration of any potential resolution of this case insofar as it affects A.M., R.M., and M.M.

IT IS FURTHER ORDERED that Mr. Davis shall be absolutely immune from any liability or any actions taken pursuant to this appointment insofar as his conduct in this case will be limited to investigating, on behalf of the Court, into the fairness and reasonableness of any potential resolution of this matter and its effects on A.M., R.M., and M.M. The Court confers on Mr. Davis all immunities and protections available under *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991). This order of appointment of the guardian ad litem shall expire with the entry of an order dismissing the underlying case with prejudice.

IT IS FURTHER ORDERED that Plaintiff will pay Mr. Davis' fees for his work as a guardian ad litem in this matter at this time.



THE HONORABLE KAREN B. MOLZEN
UNITED STATES MAGISTRATE JUDGE

SUBMITTED BY:

/s/ Brendan K. Egan 8/30/2013
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